UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMERICA ONLINE LATINO, et ano.,

Plaintiffs,

-against- 02 Civ. 4796 (LAK)

AOL TIME WARNER, INC., et al.,

Defendants.

- x

ORDER

LEWIS A. KAPLAN, *District Judge.*

According to the complaint, the allegations of which are accepted as true for present purposes, the plaintiffs in this action registered the domain name <americaonlinelatino.com> in 2000 and, before long, allegedly were the number one ranked response on Internet search engines provided by defendant Inktomi in response to search requests for LATINO ISP. Some months later, AOL Time Warner, owner of America OnLine, Inc. ("AOL"), registered <aolatino.com> as a domain name, following which plaintiffs offered to assign their <americaonlinelatino.com> domain name to AOL in exchange for a fee. Negotiations broke off, and AOL commenced an arbitration against plaintiffs under the Uniform Domain Name Dispute Resolution Policy, adopted by the Internet Corporation for Assigned Names and Numbers and the Supplemental Rules of the World Intellectual Property Organization ("WIPO") Arbitration and Mediation Center. In due course, the WIPO arbitrator ruled in favor of AOL, finding in substance that plaintiffs were engaged in cybersquatting and ordering the transfer of plaintiffs' domain names to AOL. While plaintiffs claim that the domain names should not have been transferred immediately given their institution of litigation, in which they seek a declaration of nonviolation of the Anticybersquatting Consumer Protection Act ("ACPA") and return of the transferred domain names, they allege that their web site was removed from the Internet, causing over $1 billion in damages. Defendants Inktomi, Inc. ("Inktomi"), Verisign, Inc. ("Verisign"), AOL Time Warner, Inc. ("AOL Time Warner"), and AOL each moves to dismiss the complaint as against it.[1]

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[1] The parties have submitted affidavits and other material *de hors* the amended complaint. The Court declines to consider it. It deals with the motion solely under Rule 12(b)(6) and elects not to convert it into a motion for summary judgment.

AOL Time Warner

The complaint contains no material factual allegations against AOL Time Warner, so its motion quite plainly must be granted.

Inktomi and Verisign

Inktomi and Verisign are named in two claims for relief, one of which (the Second) alleges that each"intentionally acted to illegally remove America Online Latino from the Internet" (Am. Cpt. § 27) and the other (the Third) that it has "harmed Plaintiffs' efforts to reduce the Digital Divide . . ." (*id.* ¶ 29). The only material factual allegation against them is a conclusory paragraph which states in relevant part:

> "AOL, Dotster, Inc., Verisign, Inc., and Inktomi, Inc. have wrongfully and intentionally removed America Online Latino from the Internet. * * * Defendants used their corporate muscle to, inter alia, illegally remove Plaintiffs from the Internet, breaching Dotster, Verisign, and Inktomi's contractual relationships with Plaintiffs and interfering with Plaintiffs' ability to make contact with potential customers and maximize its profits." (Am. Cpt. ¶ 22)

The Third Claim for relief is patently frivolous, as there is no claim for harming efforts to reduce the Digital Divide.

The Second Claim also is deficient. While a complaint need contain only "a short and plain statement of the claim," it must show "that the pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a). It is impossible to tell from this complaint, among other things, what if any contractual relationships plaintiffs had with Inktomi and/or Verisign, how Inktomi and/or Verisign breached any such relationship, what Inktomi and/or Verisign did that allegedly was illegal, what plaintiffs mean by "illegally," or anything else pertinent to the claim.

Accordingly, the motions of defendants Inktomi and Verisign to dismiss the amended complaint will be granted.

AOL Time Warner

The comments concerning Inktomi and Verisign with respect to the Second and Third Claims for relief are equally applicable to AOL, so those claims must be dismissed as to that defendant as well.

The first claim for relief appears to seek a declaratory judgment against AOL alone

to the effect that plaintiffs are not cybersquatters in violation of the ACPA and an order requiring AOL to return their domain names to them. And AOL is correct in saying that the pleading of the claim leaves a good deal to be desired. Nevertheless, it cannot be said that plaintiffs could not allege facts necessary to state a claim for a declaratory judgment.

Conclusion

In all the circumstances, the motions of AOL Time Warner, AOL, Inktomi and Verisign to dismiss the amended complaint are granted and the first amended complaint is dismissed. As it is not entirely clear that plaintiffs cannot state a legally sufficient claim against three of these defendants, at least in some limited respect, the dismissal is without prejudice to the extent, and only to the extent, that plaintiffs, no later than ten days after the date of this order, may file a second amended complaint (a) setting forth their claim, if any, for a declaratory judgment against AOL, and (b) repleading their Second Claim for Relief against AOL, Inktomi and Verisign. Should plaintiffs elect to replead, they should pay careful attention to Fed. R. Civ. P. 11.

SO ORDERED.

Dated: November 25, 2002

Lewis A. Kaplan
United States District Judge